

108 FERC ¶ 61,202  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

NorthWestern Corporation

Docket No. ES04-43-000

ORDER CONDITIONALLY AUTHORIZING ISSUANCES OF SECURITIES

(Issued August 20, 2004)

1. In this order, the Commission conditionally authorizes NorthWestern Corporation (NorthWestern) to borrow under a senior secured credit facility and to issue common stock and long-term debt as NorthWestern emerges from bankruptcy. This order benefits customers by ensuring that the authorization of a public utility to issue securities is in accordance with the requirements of section 204 of the Federal Power Act (FPA).<sup>1</sup>

**Background**

2. On July 26, 2004, NorthWestern submitted an application pursuant to section 204 of the FPA, requesting authorization (1) for long-term borrowings under a senior secured credit facility in an amount not to exceed \$250 million and to issue long-term senior secured notes in an amount up to \$350 million, which, collectively, will be secured by up to \$600 million of first mortgage bonds, and (2) to issue up to 35.5 million shares of common stock.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824c (2000).

<sup>2</sup> NorthWestern, without conceding to Montana Public Service Commission (Montana Commission) jurisdiction, states that it voluntarily filed an application with the Montana Commission seeking authorization to issue these securities “solely to the extent that such securities may affect any of NorthWestern’s assets that are regulated by the Montana Commission.” NorthWestern’s filing at 15-16. The Montana Commission granted the requested authorization on August 4, 2004.

3. NorthWestern also requests a waiver of the Commission's competitive bidding and negotiated placement requirements.<sup>3</sup>

4. In its application, NorthWestern states that it filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on September 14, 2003. NorthWestern states that the proposed financing is part of a comprehensive reorganization plan for NorthWestern to exit Chapter 11 bankruptcy and that this reorganization plan is scheduled for confirmation before the Bankruptcy Court on August 25, 2004.

### **Notice, Intervention, and Comments**

5. Notice of NorthWestern's application was published in the *Federal Register*, 69 Fed. Reg. 47,432 (2004), with interventions and protests due on or before August 6, 2004.

6. On August 6, 2004, the Montana Consumer Counsel filed a motion to intervene and comments. The Montana Consumer Counsel states that it does not oppose NorthWestern's requested authorization and that it understands that the issuance of the proposed securities is an integral part of NorthWestern's reorganization plan. However, the Montana Consumer Counsel requests that the Commission explicitly acknowledge, in any approval of NorthWestern's application, that such approval is not intended to interfere with the Montana Commission's August 4, 2004 Order.

### **Discussion**

#### **Procedural Matters**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the Montana Consumer Counsel's unopposed motion to intervene serves to make it a party to this proceeding.

#### **NorthWestern's Application**

8. NorthWestern requests authorization (1) for long-term borrowings under a senior secured credit facility in an amount not to exceed \$250 million and to issue long-term senior secured notes in an amount up to \$350 million, which, collectively, will be secured

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<sup>3</sup> 18 C.F.R. § 34.2 (2004).

by up to \$600 million of first mortgage bonds,<sup>4</sup> and (2) to issue up to 35.5 million shares of common stock. NorthWestern states that issuing the proposed securities is a vital part of a comprehensive reorganization plan intended to strengthen its financial condition, improve its credit profile and position NorthWestern for stable, long-term financial performance.

9. NorthWestern states that the proceeds of the proposed financing will be used only for general corporate purposes and to repay or refinance existing debt obligations incurred over the past several years. Specifically, NorthWestern states that the proceeds of the proposed financing will repay and refinance (a) borrowings under an existing \$50 million debtor-in-possession credit facility, (b) long-term borrowings under an existing \$390 million credit facility, and (c) an existing \$150 million of senior secured bonds maturing in 2006. In addition, the first mortgage bonds currently securing the existing \$390 million credit facility and the existing \$150 million of senior bonds will be cancelled. NorthWestern also plans to cancel its existing common stock and approximately \$1.2 billion of existing unsecured debt will be exchanged for the proposed 35.5 million shares of common stock. NorthWestern claims that refinancing these obligations at this time with longer term maturities and at a lower cost of capital will lower NorthWestern's borrowing cost and improve its cash flow and financial profile.

### **Authorization**

10. Section 204(a) of the FPA provides that requests for authority to issue securities or to assume liabilities shall be granted if the Commission finds that the issuance:

(a) is for some lawful object, within the corporate purposes of the applicant, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.<sup>5</sup>

11. The Commission concludes that NorthWestern's requested authorization, as conditioned below, meets the standards of section 204.

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<sup>4</sup> The proposed securities will be secured by approximately \$473 million and \$127 million of first mortgage bonds issued under NorthWestern's indenture covering its utility assets in Montana and South Dakota, respectively.

<sup>5</sup> 16 U.S.C. § 824c(a) (2000).

12. The Commission finds that NorthWestern's proposed borrowings and issuances of debt and common stock are for lawful objects within NorthWestern's corporate purposes and are necessary, appropriate and consistent with NorthWestern's performance as a public utility. NorthWestern states that the primary purposes of the borrowings and the proposed securities is to repay or refinance debt maturing within the next two years and to enable NorthWestern to emerge from bankruptcy. Refinancing or retiring debt and adding the proceeds to working capital are lawful objects and are routinely practiced in the electric industry.<sup>6</sup> The Commission also recognizes that the borrowings and the proposed securities are a vital part of the reorganization plan and that NorthWestern could potentially be unable to emerge from bankruptcy without the requested authorization, ultimately harming the public interest.

13. The Commission finds that the authorization, as conditioned below, is necessary and appropriate, giving NorthWestern the flexibility necessary to refinance its debt securities with the most favorable terms, and enabling NorthWestern to emerge from bankruptcy and strengthen its financial condition. Further, with the conditions ordered below we believe that such authorization should not impair NorthWestern's ability to provide service as a public utility.<sup>7</sup>

14. As a result, the Commission will conditionally authorize (1) the long-term borrowings under a senior secured credit facility in an amount not to exceed \$250 million and the issuance of long-term senior secured notes in an amount up to \$350 million, which, collectively, will be secured by up to \$600 million of first mortgage bonds, and (2) the issuance of up to 35.5 million shares of common stock, subject to the following conditions. As stated above, the Montana Commission granted NorthWestern authorization to issue securities in an order issued on August 4, 2004. The Commission authorization granted here is not inconsistent with the authorization granted in the Montana Commission order.

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<sup>6</sup> Aquila, Inc., 107 FERC ¶ 61,044 at P 14 (2004).

<sup>7</sup> *Id.*

15. First, the securities are subject to the restrictions the Commission imposed on secured and unsecured debt in the Westar Order.<sup>8</sup> NorthWestern indicates that all of its debt securities will be collateralized by first mortgage bonds issued under indentures for their Montana and South Dakota utility assets. Therefore, NorthWestern must use the proceeds of the debt for utility purposes only. Further, if NorthWestern “spins-off” or divests any utility assets that secure its debt issuances, then NorthWestern must “spin-off” or divest a proportionate amount of debt. Similarly, if NorthWestern subsequently disposes of any utility or non-utility assets that were financed with unsecured debt, then NorthWestern must “spin-off” a proportionate amount of that unsecured debt.

16. Second, NorthWestern must file quarterly informational status reports detailing its current financial condition and debt-reduction efforts and any plans that NorthWestern has to further improve its financial condition by decreasing its debt obligations. NorthWestern must file these status reports within 30 days of the end of each calendar quarter through December 31, 2007.

17. Third, NorthWestern must file a Report of Securities Issued within 30 days after the sale or placement of any long-term debt or equity securities, as stated in the Commission’s regulations.<sup>9</sup>

The Commission orders:

(A) NorthWestern is hereby authorized (1) to make long-term borrowings under a senior secured credit facility in an amount not to exceed \$250 million and to issue long-term senior secured notes in an amount up to \$350 million, which, collectively, will be secured by up to \$600 million of first mortgage bonds, and (2) to issue up to 35.5 million shares of common stock.

(B) This authorization is effective as of the date of this order and terminates two years thereafter.

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<sup>8</sup> In Westar Energy, Inc., 102 FERC ¶ 61,186, *order on reh’g*, 104 FERC ¶ 61,018 (2003) (Westar Order), the Commission imposed conditions on all future issuances of secured and unsecured debt to prevent, among other things, public utilities from borrowing substantial amounts of money and using the proceeds to finance non-utility businesses to the detriment of utility customers. NorthWestern states that it is aware of the policies announced in the Westar Order, and will abide by such policies and conditions as clarified. See NorthWestern’s filing at 15 n.13.

<sup>9</sup> 18 C.F.R. §§ 34.10, 131.43 (2004).

(C) NorthWestern's requested waiver of the Commission's competitive bidding and negotiated placement requirements at 18 C.F.R. § 34.2 (2004) is hereby granted.

(D) This authorization is subject to the conditions specified in the body of this order and the restrictions in the Westar Order.

(E) NorthWestern must file quarterly informational status reports detailing its financial condition and debt-reduction efforts within 30 days of the end of each calendar quarter until December 31, 2007.

(F) NorthWestern must file a Report of Securities Issued, under 18 C.F.R. §§ 34.10 and 131.43 (2004), no later than 30 days after the sale or placement of any long-term debt or equity securities.

(G) The authorization granted in Ordering Paragraph (A) above is without prejudice to the authority of the Commission with respect to rates, services, accounts, valuation, estimates, or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission.

(H) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.